

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 886 (Wicks) – As Amended March 23, 2023

As Proposed to be Amended

SUBJECT: California Journalism Preservation Act

SYNOPSIS

According to Northwestern University's Medill School of Journalism, since 2005, the United States has lost more than 2,500 newspapers and tens of thousands of newsroom jobs, turning the communities of tens of millions of Americans into siloed "news deserts" devoid of local reporting. By 2025, it is estimated that one-third of the newspapers that were in operation twenty years ago will be gone.

While newspapers have struggled for decades and their decline cannot be laid entirely at the feet of social media, social media platforms' general refusal to reimburse news organizations for using their content to entice and retain visitors has clearly played a significant role.

Platforms that display news content are, increasingly, designed to keep viewers in their walled garden, meaning users are able to view full content without ever having to leave the platform, which means the platforms capture all of the digital advertising revenue, with none of it passed along to the content creators, the journalists.

In an effort to shore up the newspaper and local news broadcasting industry, this bill proposes requiring large platforms, primarily Facebook, Google, and Microsoft, to enter into binding arbitration with digital journalism providers to establish an appropriate percentage of advertising revenue to be paid to digital journalism providers for accessing their journalistic output. Under this bill, accessing content includes acquiring, crawling, and indexing content. To insure that the increased revenue is reinvested in newsrooms, the bill requires that 70 percent of the funds derived from the bill must be spent on news journalists employed by the eligible digital journalism provider.

Around the world, governments have begun requiring that large social media platforms compensate digital journalism providers for the use of their content. Two of those governments are Australia and Canada. The framework presented in this bill most closely resembles the Australian model, with the exception that there is no requirement for a negotiation between the platforms and news providers prior to arbitration.

The details of how the binding arbitration process will function are not within the jurisdiction of the Privacy and Consumer Protection Committee and will be handled by the Judiciary Committee if the bill passes this Committee. The agreed-upon amendments are intended to replace the current percentage designation in proposed section 3273.63(b) of the bill with a final offer arbitration process that will bind all parties.

This bill is co-sponsored by the California Newspaper Publishers Association and the California Broadcasters Association, among others. It also enjoys support from a large number of other

organizations, including the News Media Alliance, the Pacific Media Workers Guild (Local 39521, and the San Fernando Valley Sun. On the other side, among the opponents are ACLU California Action, the California Chamber of Commerce, Technet, and the California Taxpayers Association.

This bill will next be heard in the Assembly Judiciary Committee if it passes this Committee.

SUMMARY: Creates the California Journalism Preservation Act, which requires certain online platforms, as defined, to enter into binding arbitration with eligible publishers and network stations, as defined, to establish a journalism usage fee that will be paid to journalism providers to compensate for use of their work product. Specifically, **this bill:**

- 1) Requires online platforms, as defined, and eligible digital journalism providers, as defined, to enter into a final offer arbitration process to determine the percentage of advertising revenue that online platforms will pay the providers for the use of their content on their platforms.
- 2) Requires that an eligible digital journalism provider that submits a notice to a covered online platform receive a journalism usage fee payment from the platform.
- 3) Requires a platform to track and record the total number of the covered platform's websites that link to, display, or present the news articles, works of journalism, or other content of an eligible digital journalism provider that the covered platform has displayed or presented to California residents.
- 4) Prohibits a platform from retaliating against a digital journalism provider for asserting its rights under this title.
- 5) Allows a provider who has been retaliated against to bring a civil action against the platform.
- 6) Requires that the digital journalism provider spend at least 70 percent of the funds received on journalists it employs and maintaining or enhancing the production and distribution of news or information.
- 7) Defines "access" as acquiring, crawling, or indexing content.
- 8) Defines "advertising revenue" as revenue generated through the sale of digital advertising impressions that are served to customers in California through an online platform, regardless of the website or application used, and whether or not the advertising references the news content.
- 9) Defines "covered platform" as a platform that at any point during a 12-month period meets either of the following criteria:
 - a) Has at least 50 million United States-based active users or subscribers.
 - b) Is owned or controlled by a person with either of the following:
 - i) US net annual sales or market capitalization of greater than \$550 billion.
 - ii) At least 1 billion worldwide monthly active users.

- 10) Defines “eligible broadcaster” as a person that meets all of the following criteria:
- a) Holds or operates under a license issued by the Federal Communications Commission.
 - b) Engages professionals to create, edit, produce, and distribute original content concerning matters of public interest.
 - c) Updates the content at least once a week.
 - d) Uses an editorial process for error correction and clarification.
- 11) Defines “eligible digital journalism provider” as an eligible publisher or broadcaster that discloses its ownership to the public.
- 12) Defines “eligible publisher” as a person that publishes a qualifying publication.
- 13) Defines “online platform” to mean an internet website, online or mobile application, digital assistant, or online service that does both of the following:
- a) Accesses news articles, works of journalism or other content, or portions thereof, generated, created, produced or owned by an eligible digital journalism provider.
 - b) Aggregates, displays, provides, distributes, or directs users to content described in a).
- 14) Defines “qualifying publication” as an internet website, online or mobile application, or other digital service that meets all of the following criteria:
- a) Does not primarily display, provide, distribute, or offer content generated by an eligible broadcaster or television network.
 - b) Provides information to an audience in California.
 - c) Performs a public information function comparable to that traditionally served by newspapers or other periodical news publications.
 - d) Engages professionals to create, edit, produce, and distribute original content concerning matters of public interest.
 - e) Updates its content at least weekly.
 - f) Has an editorial process for error correction and clarification.
 - g) The internet website, online or mobile application or other digital service meets any of the following criteria:
 - i) Generated at least \$100,000 in annual revenue from its editorial content in the previous calendar year.
 - ii) Had an International Standard Serial Number assigned to an affiliated periodical before January 1, 2024.

- iii) Is owned or controlled by an organization exempt from federal income taxation pursuant to Section 501(C)(3) of the Internal Revenue Code of 1986.
- h) Has at least 25 percent of its editorial content consisting of information about topics of current, local, national, or international public interest.
- i) Is not wholly or partially owned by an entity that meets any of the following criteria:
 - i) A foreign power or an agent of a foreign power.
 - ii) Has been designated as a foreign terrorist organization.
 - iii) A terrorist organization.
 - iv) A specially designated global terrorist organization.
 - v) An affiliate of an entity described above.
 - vi) Has been convicted of violating or attempting to violate United States terrorism laws.

15) States legislative findings and declarations in support of the foregoing.

EXISTING LAW:

- 1) States that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (U.S. Const., Amend. 1)
- 2) States, as a matter of federal law, that it is the United States' policy to preserve the vibrant and competitive free market that presently exists for the internet and other interactive computer services, unfettered by federal or state regulation, and to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the internet and other interactive computer services. (47 U.S.C. § 230.)
- 3) Enacts the Public Broadcasting Act of 1975, which establishes the California Public Broadcasting Commission (PBC), in state government as an independent commission, in order to encourage the growth and development of public broadcasting services to the people of this state, as specified. (Gov. Code §§ 8800.-8809.5.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS:

1) **The need for this bill.** According to Northwestern University's Medill School of Journalism, since 2005, the United States has lost more than 2,500 newspapers and tens of thousands of newsroom jobs, turning the communities of tens of millions of Americans into siloed "news deserts" devoid of local reporting. Most communities that lose a newspaper do not get a digital or print replacement. According to its 2022 "State of Local News" report:

This is a nation increasingly divided journalistically, between those who live and work in communities where there is an abundance of local news and those who don't. Invariably, the economically struggling, traditionally underserved communities that need local journalism the most are the very places where it is most difficult to sustain either print or digital news organizations.

The loss of local journalism has been accompanied by the malignant spread of misinformation and disinformation, political polarization, eroding trust in media, and a yawning digital and economic divide among citizens. In communities without a credible source of local news, voter participation declines, corruption in both government and business increases, and local residents end up paying more in taxes and at checkout.

By 2025, it is estimated that one-third of the newspapers that were in operation twenty years ago will be gone. (Penny Abernathy, *The State of Local News 2022*, Northwestern University. June 29, 2022 available at <https://localnewsinitiative.northwestern.edu/research/state-of-local-news/report/>.)

According to information provided by the bill's sponsors, the California Newspaper Publishers Association (CNPA), between 2004 and 2019, in California one in four publications closed their doors. Then in 2020, the pandemic hit and California publications saw ad revenues drop anywhere from 40 to 78 percent while placing content in front of paywalls as a public service, according to a survey of CNPA members. That survey also found that 66 percent of CNPA members found that digital revenue is still not enough to offset the losses in print advertising. However, according to a Pew research study, 68 percent of Americans still rely on newspapers, 71 percent feel they report accurately, and 66 percent see newspapers as a government watchdog. Nationally web traffic to the top 50 news sites is up 39 percent. Between 16 and 40 percent of Google search results are from news content. However, in order to appear on big tech platforms, news outlets assert that they are required to permit full access to their content and have no bargaining power.

Platforms that display news content are, increasingly, designed to keep viewers in their walled garden, meaning users are able to view full content without ever having to leave the platform, meaning the platforms capture all of the digital advertising revenue, with none of it passed along to the content creators, the journalists. According to a report from the News Media Alliance, a supporter of the bill:

Google used its market dominant position to force news publishers into the use of their content in the newly designed Google News app. [. . . which] is designed in a fashion to satisfy many casual readers, rather than leading them to click through to the articles. Further, to participate meaningfully in Google News, news publishers must accept the onerous Google News Producer Terms of Service, which grant Google the right to use the news content not only in Google News and the Google News app, but for all "Google Services." (News Media Alliance, *How Google abuses its position as a market dominant platform* (Jun. 2020) available at <http://www.newsmediaalliance.org/wp-content/uploads/2020/06/NMA-Google-White-Paper-Design-Final.pdf>.)

2) **Author's statement.** According to the author:

A free and diverse press is the backbone of a healthy and vibrant democracy. When newsrooms are full, the public reaps rewards. Studies show that communities without local journalism suffer consequences, from declining civic engagement and lower voter turnout, to higher taxes and increased corruption.

California has lost more than 100 newspapers in the last decade. As news consumption has moved online, community news outlets have been downsizing and closing at alarming rates. It's not that no one reads or watches news anymore. It's the fact that huge technology platforms like Google and Meta have coerced newsrooms to share the content they produce, which the platforms sell advertising against, while providing little to no compensation in return.

AB 886, the California Journalism Preservation Act (CJPA), directs big tech platforms to pay publishers a usage fee each time they use local news content. In turn, the bill requires news publishers to invest 70% of the fee back into journalism jobs.

The CJPA provides a lifeline for news outlets by directing some of the revenue from ad dollars back to the print, digital and broadcast media that bear the entire cost of gathering and reporting news while tech platforms bear none. These dominant companies are padding their profit margins with locally produced news without adequately compensating the originators of that content.

The framers of the US Constitution understood that a government of, for, and by the people requires an informed citizenry. There is no enterprise that is more important to this precept than a thriving, free press.

3) What this bill would do. This bill would require platforms, as defined, primarily Facebook, Google, and Microsoft to enter into binding arbitration in order to establish an appropriate percentage of advertising revenue to compensate digital journalism providers for accessing their journalistic output. Under this bill, accessing content includes acquiring, crawling, and indexing content. The bill would require covered platforms to pay an eligible digital journalism provider an allocation share based on the platform's access of that provider's content. The bill would require that the journalism usage fee be a percentage of the advertising revenue the platform receives for the month multiplied by the allocation share for the use of the journalism provider's content.

The bill requires a journalism provider to notify the covered platform that it reasonably believes itself to be an eligible provider. It also requires that the platform track and record, for each provider, the platform's websites that link to, display, or present journalism content to California residents.

The bill also requires that 70 percent of the funds derived from the bill must be spent on news journalists employed by the eligible digital journalism provider. This will ensure that funds are reinvested in newsrooms.

4) Understanding the concept of the "walled garden" and its impact. A "walled garden," when it comes to search engines and online social media platforms, means that a platform does not just capture a small piece of an article, such as a picture and headline, which then requires a user to click through to the news site for more information. Instead, the platform mirrors the

content of the website or captures the key points of an article so the user never has to leave the original platform. The benefit of the walled garden for the platform is that it is able to attract more advertising revenue and, perhaps more importantly, mine users' data in order to target advertising, modify their platform based on users' movement to encourage them to linger longer, and/or to sell to a third-party. According to information provided by the author, news platforms only get any revenue when a user clicks through to their website; whereas, in a walled garden, the platforms are using the work product of the news site, without compensating them.

According to the sponsors, "As news consumption has moved online, Google and Facebook have become the de facto gatekeepers of journalism. As such, they leverage their dominance of the digital marketplace, setting rules for how news content is displayed, prioritized, and monetized." As a result of this imbalance and their reliance on online platforms to attract people to their content, digital journalism providers are at a significant disadvantage when it comes to negotiating with the platforms for compensation for their work.

5) Journalism Competition & Preservation Act (JCPA) (H.R. 1735 and S. 673) of 2022. The federal JCPA proposed to create a process through which broadcast or digital news providers would have been able to collectively negotiate with covered online platforms (e.g., social media companies) regarding the use of the news providers' content by the platforms. Specifically, the bill would have authorized an eligible provider (one with not more than 1,500 full-time employees and non-network news broadcasters) to form an entity with other eligible providers to negotiate the pricing, terms, and conditions by which the platform could use the providers' content.

Similar to this bill, the JCPA defined an eligible platform as one that had at least 50 million monthly users in the United States or was owned or controlled by a person with either sales or a market capitalization that exceeds \$550 billion or not fewer than one billion worldwide monthly active users. Finally, the legislation included a sunset date six years after its enactment and required the Government Accountability Office to study the impact of the joint negotiations and submit a report five years after enactment.

Neither bill was voted on by the U.S. Senate or House of Representatives before the adjournment of the 2021-2022 session. According to the sponsors of this bill, the definitions included in this bill were modeled after language in the JCPA. However, unlike the JCPA, which authorized a collective negotiation, this bill establishes a binding arbitration process to establish a usage fee and requires that the publishers and broadcasters use 70 percent of the revenue on the journalists they employ and maintaining the production of the news.

As has been the case with many issues—access to abortion, sensible gun control measures, and online privacy protections, to name a few—the ideal solution to the problem this bill is seeking to address would be federal legislation that impacts all states. However, those attempts have been unsuccessful. So, it falls to the Legislature to lead the way in finding a solution to protect what remains of California's newspaper industry and local news sources. This bill is an effort to begin putting those supports in place by requiring that online platforms pay for using the journalism content that they take from other sources and post on their platforms in order to attract users and collect the users' personal data, thereby increasing their already significant profits.

6) Other jurisdictions. Around the world, governments have begun requiring that large social media platforms compensate digital journalism providers for the use of their content. Two of those governments are Australia and Canada. The framework presented in this bill most closely

resembles the Australian model, with the exception that there is no requirement for a negotiation between the platforms and news providers, prior to arbitration.

Australia. In March 2021, Australia implemented a mandatory code of conduct that governs commercial relationships between Australian news businesses and designated digital platforms. The law is intended to ensure that news media businesses are compensated for the content they generate on social media platforms. In enacting the code, Australia became the first country where a government-appointed arbitrator can decide on the final price that Google and Facebook will have to pay to Australian news publishers, if an agreement cannot be reached independently. (Saheli Roy Choudhury, *Australia passes new media law that will require Google, Facebook to pay for news*, CNBC, (Feb 24, 2021) available at <https://www.cnbc.com/2021/02/25/australia-passes-its-news-media-bargaining-code.html>.)

Canada. The Canadian Parliament recently passed Bill C-18, the Online News Act, which requires large digital platforms to compensate Canadian media companies for republishing their content on their platforms. The Act would create a system overseen by the Canadian Radio-television and Telecommunications Commission, which would have the power to impose administrative monetary penalties on companies that are not compliant with its provisions. As a result, Google announced that it is blocking some Canadian users from viewing news content in a test run. (Why Google is blocking some Canadians from seeing online news, The Canadian Press (Feb. 23, 2023) available at <https://www.cbc.ca/news/business/google-blocking-news-1.6757500>.)

7) **Committee amendments.** The details of how the binding arbitration process will work are within the jurisdiction of the Judiciary Committee, and will be handled by that Committee if the bill passes this Committee. Generally speaking, the agreed-upon amendments will replace the current percentage designation in proposed Section 3273.63(b) of the bill with a final offer arbitration process that will bind all parties.

In addition to the arbitration language, the amendments will require that notices from a digital journalism provider that will designate them as eligible for a share of advertising revenues through the usage fee will also be provided to the appropriate state department.

The amendments will also contain a definition of a “television news network” (see #15 in the **SUMMARY**).

Finally, the amendments will make several technical and clarifying changes.

8) **Things to Consider.**

1. **Why a free press is critical to a functioning democracy.** As noted by the author, the framers of the US Constitution understood that one of the key pillars of a democracy was ensuring the existence of a free press. James Madison, echoing the Virginia Declaration of Rights (1776), referred to a free press as “one of the great bulwarks of liberty” and believed it was a prerequisite for a free society. Under British rule, the colonists were familiar with a press that was controlled by a monarchy. Between the invention of movable type in the mid-1400s and the expiration of licensing law in 1694, the British Crown licensed printers and required official approval before publication. Despite the expiration of the law in England, the control over the press continued in the British colonies, allowing officials to suppress ideas or information they considered harmful. During the colonists’ struggle for

independence from Great Britain, they used pamphlets, broadsides, and newspapers to protest, debate, and rally support for independence. The press proved to be a critical tool for reaching a wide audience. Given this experience of a controlled press and the way in which the press was used around the time of the Revolutionary War to rally support for independence, it is not surprising that the framers understood that maintaining a free society required an engaged and informed citizenry and the key to that was through freedom of the press.

Of course, almost immediately, disagreements would break out over the meanings of “freedom of speech” and “freedom of the press.” At moments throughout the 18th, 19th, and 20th centuries, there were calls for legal restraints to be placed on the press. Had those efforts been successful, it is worth thinking about their impact on the country’s ability to maintain an informed citizenry and how quickly democracy may have unraveled as a results.

Whether past efforts to limit and control the press were related to concerns around “muckraking” in the 19th century or attempts to stifle leftist or ethnic papers because they did not uphold “American values” at the turn of the 20th century, these legal and philosophical struggles did not contemplate the potential death of the press that we are faced with in the 21st century, a death by starvation. If, as the framers believed, the survival of democracy depends upon an informed citizenry and freedom of the press, what happens when that press is threatened with extinction, leaving in its place misinformation, sensationalism, and opinion, rather than fact-based journalism? How will the American public be made aware of future corruption or injustices without journalists speaking truth to power? At what point is it incumbent on the government to step in and ensure its survival and what happens if government fails to act?

Throughout the history of the United States, we have powerful examples of journalists and newspapers uncovering abuses of power, corruption, and state sanctioned violence.

Take the example of investigative journalist and publisher, Ida B. Wells-Barnett, who led an anti-lynching crusade in the southern United States by documenting the lynching of Black men and boys. Wells-Barnett co-owned and wrote for the Memphis *Free Speech* newspaper. In 1892, after three friends of hers had been lynched by a mob, Wells-Barnett began an editorial campaign against lynching that ultimately led to an angry mob destroying her newspaper’s office. Despite that, she continued her anti-lynching work. Wells-Barnett, through her investigative journalism was able to uncover the fact that white Southerners involved in lynching Black men and boys often used the argument that the men had sexually assaulted white women. Through her investigation she came to understand and write about the fact that the lynchings, in actuality, were often used against Black people who dared to start businesses, own property, and build wealth. In 2020, she was posthumously awarded a special Pulitzer Prize citation for her work and many scholars credit her work as planting the seeds of the Civil Rights Movement. (Neely Tucker, “*Truth is mighty and will prevail*”– Ida B. Wells, The Library of Congress (Feb. 6, 2020) available at <https://blogs.loc.gov/loc/2020/02/truth-is-mighty-and-will-prevail-ida-b-wells/>.)

As another example, just under 100 years later, investigative journalists Bob Woodward and Carl Bernstein, working for *The Washington Post*, slowly and diligently uncovered and reported on the Watergate scandal that stemmed from illegal activities by President Nixon and his aides related to the burglary and wiretapping of the national headquarters of the

Democratic Party at the Watergate office complex in Washington, D.C. Eventually, their reporting came to encompass allegations of other loosely related crimes committed both before and after the break-in. Their reporting ultimately played a significant role in his resignation.

One final, current, example that is still unfolding: earlier this month, three investigative journalists published a story in *ProPublica* detailing the relationship between a United States Supreme Court Justice and a billionaire real estate magnate. This friendship over 25 years has involved lavish vacations, gifts, and real estate deals that have all gone undisclosed by the Justice. (Kaplan, Elliott and Mierjeski, *Clarence Thomas and the Billionaire*, *ProPublica* (Apr. 7, 2023) available at <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>.) Following quickly on the heels of that report, two days later, a journalist for the *Los Angeles Times* connected the *ProPublica* story to the fact that 20 years ago, the *LAT* reported on the Justice's disclosure of expensive gifts and trips paid for by the same billionaire. At the time, the Justice did not comment on the article, but also did not disclose any gifts or trips after it was published. (Savage, *Los Angeles Times reported about Justice Thomas' gifts 20 years ago. After that he stopped disclosing them*, *The Los Angeles Times* (Apr. 6, 2023) available at <https://www.latimes.com/politics/story/2023-04-06/the-times-reported-about-justice-thomas-gifts-20-years-ago-after-he-just-stopped-disclosing-them>.) Because of the work of all of these investigative journalists, the public now knows that at one time the gifts were reported on disclosure forms, then they stopped being reported despite the fact that the Justice continued to enjoy his friend's generosity.

Absent the work of journalists and the role of newspapers in this country over the last 250 years or more, it is likely that our democracy would have died in its infancy. Based on the quickly declining number of local newspapers and broadcasters, it appears that the independent, free press may not last more than a handful of years and its demise would lead to democracy's demise if the framers are correct.

2. Does this bill create an incentive for more sensational stories and less journalism? In opposition to the bill, the Chief Executive Officer of CalMatters, the nonprofit news organization that covers California policy, raises the concern that the legislation encourages news providers to dramatically increase the volume of stories they produce, so that more of their links show up in searches and thus generate revenue. He argues:

The larger publishers (those doing fewer California news stories than ever) have access to unlimited numbers of stories from their sister publishers outside the state, and they can use artificial intelligence to generate thousands more—none of which might be news that's useful to Californians. That flooding of the marketplace would make it even harder for people seeking real California news to find it. That benefits the larger publishers at the expense of the smaller ones.

He is not the only person to raise this concern and it is worth considering whether or not the model proposed in this bill will exacerbate the problem of sensationalism trumping traditional news in an effort to attract more readers online. The solution proposed in this bill will indeed establish a system where payment is based on the number of impressions online. However, the incentive to get eyeballs and clicks already exists today, so that users will click through to a news site and the publisher will get advertising revenue. In an effort to generate

much needed revenue, publishers are already trying everything they can to optimize search results. This bill is unlikely to make them try things they have not tried already.

In fact, one could make the opposite argument: it is conceivable that with financially sound books and healthier newsrooms, more engaging and investigative reporting will lead to quality stories based on real events in city halls, schoolboards, and communities across the state. That will lead to more clicks, because there higher quality content, not lesser. As proposed in this bill, 70% of the payment must be spent on journalists. More journalists may equal both more content and higher quality.

3. Is this bill enough to save the press? This bill represents a significant step toward creating a more level playing field between powerful social media platforms and publishers and broadcaster. Once the arbitration process is completed and advertising revenues are shared between the platforms and the newspapers, it may very well be that more support is needed to ensure the continuation of journalism and local news. At that point, the Legislature may wish to consider additional remedies, including but not limited to the possibility of creating selected tax incentives, such as an exemption for newspaper subscriptions or providing a tax incentive for businesses to place advertising in local newspapers or other local media outlets. In the meantime, this bill appears to be a sensible intervention to start shoring up professional journalism.

9) **Related legislation.** SB 911 (Glazer, 2022) would have enacted the California Public Interest Media Act of 2022, establishing the California Board to Fund Public Interest Media (PIM Board) and the California Fund for Public Interest Media (PIM Fund) to encourage independent, local public service news coverage, and awarding grants to individuals or organizations. That bill passed the Assembly Accountability and Administrative Review Committee but was not heard in the Assembly Appropriations Committee.

AB 1776 (Levine, 2019) would have provided two separate sales and use tax (SUT) exemptions designed to benefit the newspaper industry. That bill was held in the Assembly Appropriations Committee.

ARGUMENTS IN SUPPORT. The California News Publishers Association, co-sponsors of the bill, write in support:

AB 886 goes to the heart of our democracy. The framers of the US Constitution understood that a government of, for and by the people requires an informed citizenry. There is no enterprise that is more important to this precept than a free and vibrant press.

But as news consumption shifts to digital sources, news outlets, especially small local ones, are shuttering at alarming rates as revenues decline and costs rise. California has lost over 100 newspapers in the last decade. We are at a moment in history when credible information is critical and when, according to Pew Research, 81 percent of Americans rely on local media to keep them informed. When local newspapers shutter, civic engagement goes down, corruption goes up, and the ability to combat disinformation erodes further.

In support of the bill, the Los Angeles Blade writes:

The provisions of Asm. Wicks' AB 886 strengthens local journalism in our state by asking Big Tech to finally pay us for our original content and requiring that we use 70 percent of the proceeds from the Act to invest in sustaining and creating journalism jobs.

As you know, Big Tech scrapes news content from the internet, displays it in response to searches and keeps the vast majority of attendant search and ad revenue ... all without investing a dime in the employment of the journalists who produce it.

Further, Big Tech has spent hundreds of millions of dollars training local businesses how they can elevate their brands on social media and other platforms to create virtually free marketing. Quite often, these businesses are prospective (and increasingly former) advertisers of the very newspapers whose content feeds generates platform traffic. It's a one-two knockout punch with an added blow.

As news consumption shifts to digital sources, news outlets, especially small local ones, are shuttering at alarming rates. As a result, many communities have become "news deserts" at a moment in history when credible information is critical.

ARGUMENTS IN OPPOSITION. In opposition to the bill, ACLU California Action writes:

A web address is literally that: the directions that get a user to the page they were looking for—the digital equivalent to a card-catalogue entry in a library. The text snippet that appears with a link helps a user figure out whether that link is the one they are looking for. Attaching a legal right to payment for links risks making it harder for anyone to find information from trusted sources online.

The platforms covered by this law are private parties who cannot be forced to disseminate the speech of the covered publishers, yet AB 886's antiretaliation provisions have the effect of forcing covered platforms to either carry the content of covered news organizations who request it or risk lawsuits alleging retaliation. That mandate is contrary to the First Amendment's guarantee of free speech, including freedom from compelled speech. The Supreme Court has repeatedly stated that the First Amendment protects the right of someone to refuse to carry the speech of others. Similar legislation was considered, and rejected, by Congress due to these constitutional concerns.

Also in opposition, the Chamber of Progress notes:

Freely sharing links to information has been a core attribute of the modern day internet, yet this legislation's mandate for platforms to pay a fee for displaying links threatens to disrupt that. While the bill intends to support journalism, publishers benefit from the traffic to their sites that platforms generate. Disrupting that relationship will not address the core goals of this bill.

Furthermore, this legislation sets a dangerous precedent of the government mandating the type of online information that platforms must pay for and also incentivizes platforms to not display or present hyperlinks to news sources. We have seen this play out internationally. In Australia, platforms were only allowed to bypass the link tax by simply cutting payment deals with the large news companies directly, completely denying any support for local news organizations, as this bill intends to do.

REGISTERED SUPPORT / OPPOSITION:

Support

California Broadcasters Association (co-sponsor)
California News Publishers Association (co-sponsor)
National Press Photographers Association (co-sponsor)
Radio Television Digital News Association (co-sponsor)
Los Angeles Blade
Media Alliance
Media Guild of The West, NewsGuild-CWA Local 39213
News Media Alliance
Pacific Media Workers Guild (the NewsGuild-Communications Workers of America Local 39521)
Picket Fence Media
San Fernando Valley Sun
San Francisco Chronicle
The Authors Guild

Opposition

ACLU California Action
Authors Alliance
California Chamber of Commerce
California Taxpayers Association
CalMatters
Chamber of Progress
Computer and Communications Industry Association
Electronic Frontier Foundation
Free Press Action
Internet.Works
James Madison Institute
Library Futures
Lion Publishers
Local Independent Online News Publishers INC.
Lookout Santa Cruz
National Newspaper Publishers Association (NNPA)
NetChoice
R Street Institute
Re:Create
Software & Information Industry Association
Techfreedom
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